

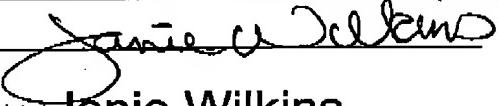
DEC 22 2005

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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) 52224/296056 |
| <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on 12/22/2005. Fax filed to centralized dtf Signature </p> <p>Typed or printed name Janie Wilkins</p> | | Application Number 09/575,839 Filed 05/22/2000 First Named Inventor Matt Ayers Art Unit 2144 Examiner Thanh Nguyen |

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
 assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
 attorney or agent of record. **40,339**
Registration number _____
 attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

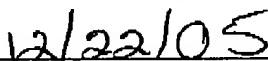


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Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

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* Notice of appeal has not received *

DEC 22 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:

Matt Ayers

ART UNIT:

2144

SERIAL NO.:

09/575,839

EXAMINER:

Thanh Nguyen

FILED:

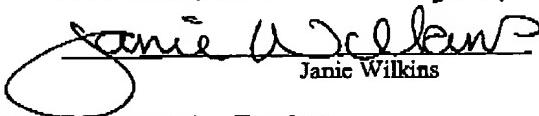
05/22/2000

FOR: Method and System for Directing
 Requests for Content to a
 Content Server Based on
 Network Performance

ATTORNEY DOCKET NO.: 52224/296056
 P1088

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

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 December 22, 2005.


 Janie Wilkins
Pre-Appeal Brief Request for Review

Sir:

Included below is a concise summary of arguments for which this review is requested.

Reasons for Requesting Review

The Examiner's rejections in the most recent Office Action, as well as the earlier rejections in the previous office action, omit essential elements required to establish a prima facie rejection; namely, the Examiner has not provided a reference that teaches or suggests at least the claim limitation of directing a first network client to a content server "based on cost measurements that measure operational characteristics of the network based on communication between a second client that is physically proximate to the first network client" and one of the content servers. In light of this clear factual deficiency in the rejections, a pre-appeal panel review is requested.

12/23/2005 MBINAS 00000030 09575839

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Remarks

In the Office Action mailed June 30, 2005, the Examiner rejected independent Claims 1, 12, 32, 33, 44, 46 and 64 under 35 U.S.C. § 013(a) as being unpatentable over USPN 6,006,264 to *Colby et al.* ("Colby") in view of USPN 6,591,298 to *Spicer et al.* ("Spicer").

Claim 1 recites directing a first network client to one of the content servers if cost measurements are available that measure operational characteristics of the network based on communication between the first network client and one or more of the content servers, otherwise directing the first network client to one of the content servers using one or more cost measurements that measure operational characteristics of the network based on communication between a second client that is physically proximate to the first network client and one or more of the content servers. *See* page 3 of the Response filed November 22, 2004. In rejecting Claim 1, the Examiner alleged that *Colby* describes directing a network client to one of the content servers "based on communication between a client that is physically proximate to the network client" and one or more of the content servers and specifically stated that "Fig. 1 shows directing the network client to content servers." However, in the same paragraph the Examiner admitted that *Colby* does not teach cost measurements that measure operational characteristic of the network or a first and a second network client. *See* Office Action dated June 30, 2005. These two allegations by the Examiner are inconsistent and thus, cannot form the proper basis for a rejection of the claims.

As explained on page 15 of the Response filed November 22, 2004, neither of the sections of *Colby* relied upon by the Examiner support the Examiner's rejection. The Examiner cited Fig. 1 of *Colby*. Figures 1a, 1b, and 1c illustrate a network that

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includes a content-aware flow switch and the accompanying text describes routing between servers or between a client and a server. The Examiner also cited Column 2, lines 47-59 of *Colby*. This section of *Colby* teaches away from the claimed invention. As explained on page 16 of the Response filed May 27, 2005, *Colby* only considers the location of the servers relative to the requesting client. *Colby* does not consider the location of other clients. In contrast to *Colby*, the claimed invention requires directing a first network client to a content server based on information related to a second client that is proximate to the first client.

The Examiner alleged that *Spicer* teaches that “cost measurement are available that measure operational characteristics of the network” and “a first and a second network client.” As explained at page 15 of the Response filed November 22, 2004, *Spicer* does not describe using information related to one client to select a content server for another client. *Spicer* is directed to the scheduling of performance measurements. Although *Spicer* describes collecting performance measurements and multiple clients, it does not describe using information about one client to select a content server for another client.

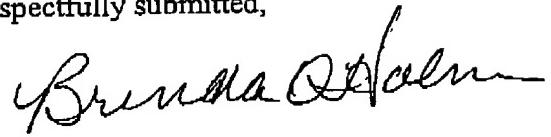
The arguments presented in the Response filed November 22, 2004 and summarized above were reiterated in a telephone interview conducted with the Examiner on January 27, 2005.

No amendments have been made to the claims since the amendments made in the Response dated November 22, 2004 to clarify that a first client is directed to one of the content servers based on cost measurements related to a second client that is proximate to the first client. See Page 3 of the Response dated November 22, 2005.

In light of the above, allowance of the pending claims is respectfully requested.

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Respectfully submitted,



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PAGE 9/9 * RCVD AT 12/22/2005 5:07:57 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/24 * DNIS:2738300 * CSID:404 815 6555 * DURATION (mm:ss):03:00